IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.2045 OF 2005

In

WRIT PETITION NO.3965 OF 2005

Shri Haji Abdul Razak Yasim Patel : Applicant

(Orig.Resp. no.13)

V/s.

Bara Imam Masjid Trust & Ors. : Respondents

...

Mr.A.V.Anturkar with Mrs.Vanita V. Bakre-Shastry for the applicant.

Dr.V.V.Tulzapurkar with Mr.R.D.Soni for the respondent nos.1 to 6.

Mr.M.H.Solkar, Asstt. Govt. Pleader, for the respondent nos.7 & 8.

Mr.Ramesh D. Patil i/. M/s.Jay & Co., for the respondent no.7 in Writ Petition no.3965 of 2005.

...

WITH

CIVIL APPLICATION NO.2046 OF 2005

In

WRIT PETITION NO.4151 OF 2005

Shri Haji Abdul Razak Yasim Patel : Applicant

(Orig. Resp. no.14)

V/s.

Rajiv Build Well Private Limited & Ors. : Respondents

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Mr.A.V.Anturkar with Mrs.Vanita V. Bakre-Shastry for the applicant.

Mr.J.P.Sen with Mr.Sanjay Gawade for the respondent nos.1 and 2.

Mr.M.H.Solkar, Asstt. Govt. Pleader, for the respondent nos.3 and 4.

Mr.Ramesh D. Patil i/b. M/s.Jay & Co., for the respondent no.8 in Writ Petition no.4151 of 2005.

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CORAM : S.A. BOBDE, J.

September 19, 2005.

ORAL ORDER :

1. These Civil Applications are made in the above Writ Petitions filed under Articles 226 and 227 of the Constitution of India which challenge an order dated 19.4.2005 passed by the Joint Charity Commissioner, Pune Region, Pune. Same contentions have been raised in both the Civil Applications. They are, therefore, being decided by this common order.

2. The Civil Applications are made in the Writ Petitions challenging the order of the Joint Charity Commissioner,

Pune Region, Pune, refusing permission to Bara Imam Masjid Trust to alienate certain immovable properties for a consideration of about Rs.5 crores. The permission has been applied for and refused under section 36 of the Bombay Public Trusts Act, 1950, hereinafter referred to as the "Act". The parties are hereinafter referred to in their original capacity as the petitioners and the respondent.

3. The respondent, by the present Civil Applications, has applied for return of these Writ Petitions for presenting them, if the petitioners so desire, before the Aurangabad Bench of this Court.

4. The only objection raised by the respondent is that the cause of action for these Writ Petitions has not arisen within the territorial jurisdiction of the Appellate Side of the Principal Seat of this Court at Bombay since the properties in respect of which the dispute arises are located within the territorial jurisdiction of the Aurangabad Bench of this Court. The petitions, therefore, ought to have been presented to the Judges of this Court sitting at Aurangabad, hereinafter referred to as the "Aurangabad Bench".

5. Bara Imam Masjid Trust owns properties at Ahmednagar. They applied under section 36 of the Act to the Charity Commissioner at Pune. All public trusts with immovable properties at Ahmednagar distract are required to apply to the Charity Commissioner at Pune only for such permission under section 36 and to no other authority. This permission, as stated above, has been rejected by the impugned order dated 19.4.2005.

6. Having heard the learned counsel for both the sides, I am of view that there is no merit in the respondent's objection in view of the decision of a Division Bench of this Court in Nitin Industrial Associates, Khamgaon v. State (A.I.R. 1986 Bombay 298). In that case, since the tender notice and the impugned Government Resolution were issued at Mumbai, it was contended that the whole cause of action had arisen in Mumbai. It was the cause of action that attracted jurisdiction and, therefore, the Division Bench of this Court at Nagpur had no jurisdiction to receive, try and hear the Writ Petition which challenged the tender notice and the Resolution. The respondents there had objected to the matter being heard by the Judges at Nagpur, inter alia, on the basis of Chapter XXXI of the Bombay High Court (Appellate Side) Rules, 1960 which is similar to the rule which regulates presentations of

petitions to the Judges of this Court at Aurangabad i.e. the Aurangabad Bench. This Court rejected the respondents' contention on the unambiguous language of Article 226 clause (1) as follows:-

> "Hence Cl.(1) provides that within the State, the Court's jurisdiction is coterminous with the territories of the State, whilst Cl.(2) envisages the issue of writs beyond the Court's territorial jurisdiction provided that the cause of action has arisen within the territorial jurisdiction of the Court concerned. In the present case, the tender notice and the impugned resolution were both issued within the territorial jurisdiction of this Court and by reason of Art. 226 Cl.(1) the Bench at Nagpur would clearly have jurisdiction. The provisions of S.41, Bombay Reorganisation Act, 1960 (Act No.11 of 1960) read with R. 127, Bombay High Court Appellate Side Rules, cannot abridge the writ jurisdiction."

The Division Bench concluded as follows:-

"In view of this, the contention must be negatived. But be that as it may, although the said two provisions cannot abridge the jurisdiction, the said two provisions need to be looked at in their proper perspective. The said two provisions, namely, S. 41, Bombay Reorganisation Act, 1960 (Act No.11 of 1960) and the provisions of Chap. XXXI, Bombay High Court Appellate Side Rules, 1960 are designed to meet administrative requirements and administrative convenience. Hence it is not that every petition under Art. 226 which is presented to this Bench at Nagpur that needs to be entertained and regard must be had to these two provisions in the filing of writ petitions so that the petitions can be dealt with by an appropriate Bench. However, in so far as this matter is concerned, in view of the above discussion, it cannot be said that the Bench at Nagpur has no jurisdiction to try and hear the petition. Ordinarily we are extremely slow in entertaining such matters which are required to be

> entertained and tried at Bombay, but in the peculiar facts and circumstances of this case, when the matter has already been admitted as back as on 25-9-1984 and, if we may say so, we have decided to hear and decide this matter while sitting at Nagpur."

7. Mr.Anturkar, the learned counsel for the respondent, however, submitted that the Principal Seat of this Court on its Appellate Side at Bombay should refuse to entertain these matters since the property in respect of the sale of which permission has been refused by the Charity Commissioner is situate in Ahmednagar district. According to him, these petitions arising in the judicial district of Ahmednagar must be presented to the Aurangabad Bench. There is no merit in this contention either since all applications for permission of sale of property of a public trust in Ahmednagar district are required to be made to the Charity Commissioner at Pune and, therefore, the matters clearly arise within the ordinary territorial jurisdiction of the Appellate Side of the Principal Seat of this Court which admittedly extends to Pune.

8. The relevant rule in this regard is sub-rule (1) of

rule 1 of Chapter XVII of the High Court (Appellate Side) Rules, 1960, reads as follows:-

> **"1(1) Applications for issue of writs, directions, etc. under Article 226 of the Constitution**
>
> Every application for the issue of a direction, order or writ under Article 226 of the Constitution shall, if the matter in dispute is or has arisen substantially outside Greater Bombay, be heard and disposed of by a Division Bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought, it shall be solemnly affirmed or supported by an affidavit. In every such application, the applicant shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application has been disposed of."

Rule 2 of Chapter XXXI which was introduced after the

formation of the Aurangabad Bench reads as follows:-

> "2. All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Ahmednagar, Aurangabad, Beed, Jalgaon, Jalna, Nanded, Osmanabad, Parbhani and Latur which lie to the High Court at Bombay shall be presented to the Additional Registrar at Aurangabad and shall be disposed of by the Judges sitting at Aurangabad:
>
> Provided that the Chief Justice may, in his discretion, order that any case or class of cases arising in any such District shall be heard at Bombay:
>
> Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Aurangabad."

Having regard to the aforesaid rules, it is clear that

this matter has arisen within the ordinary territorial jurisdiction of the Appellate Side of the Principal Seat of this Court at Bombay. This is because the impugned permission for the alienation of the property was applied for and refused at Pune. It is of no consequence, as contended by the learned counsel for the respondent, that the properties are not situate within the ordinary territorial limits of the Appellate Side of the Principal Seat.

9. Dr.Tulzapurkar, the learned counsel for the petitioners has rightly submitted that what is relevant is where the impugned order was passed and not where the properties are located.

10. Mr.Anturkar, however, relied on the decision of a Division Bench of this Court in J.K. Dadlani v. B.M.Kantawala (A.I.R. 1975 Bom. 182). In that case, the petitioner had challenged the validity of rule framed by this Court on the Original Side that an Advocate cannot appear unless he is intrusted by an Attorney as required by the High Court (O.S.) Rules. In this context, this Court observed as follows:-

"Rule-makers appear to have advisedly made

> the jurisdiction of either wing of the High Court to depend on place not of accrual of "cause of action", but of "matter in dispute". It is the impact of the orders, and not the place of issuance thereof that counts. Distinction between the two expressions is too transparent to need more discussion."

The learned counsel emphasised the observation of this Court that it is the impact of the orders and not the place of issuance thereof that counts. Even applying the test laid down by this Court in the aforesaid decision, it must be held in this case that the impact of the order, at least a material part thereof, if the petitions succeed, would certainly be at Pune since the decision of the Charity Commissioner at Pune would be set aside. That it would affect properties at Ahmednagar would not be determinative of the matter, since, in a given case, the trust may hold properties at several places within the State.

11. I am of view that in a case such as this where the impugned order is passed within the territorial limits of the jurisdiction of the Principal Seat or of a Bench of

this Court, it is the Principal Seat or the Bench within whose ordinary territorial jurisdiction the order is passed which may normally try and hear the matter. Undoubtedly, when a part of the cause of action has arisen within the normal territorial jurisdiction of another Bench, that Bench would also have jurisdiction to entertain the matter in view of the law laid down by this Court in Nitin Industrial Associates (supra). In fact, in Kusum Ingots & Alloys Ltd. v. Union of India [(2004) 6 S.C.C. 254], the Supreme Court observed as follows:-

> "When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place."

It must be made clear that what is at issue is not power of the Principal Seat or various Benches to issue writs which may have an impact on orders passed anywhere in the State or affect properties or persons residing anywhere in the State. What is at issue is the normal practice regulated by this Court by enacting the Bombay High Court (Appellate Side) Rules, 1960.

12. Mr.Anturkar, the learned counsel for the applicants, relied on the decision of the Supreme Court in Rajasthan High Court Advocates' Assn. v. Union of India (2001) 2 S.C.C. 294) where the following explanation, added by the order of the learned Acting Chief Justice, was challenged:-

> "In the above order for the explanation the following may be submitted:
>
> 'Explanation.--A writ case shall be deemed to arise in the district where the cause of action for issuing the first order pertaining to that case passed by a court, tribunal or authority has arisen irrespective of the district in which the appeal or revision from that order is heard and irrespective also of the fact whether or not there has been any modification or reversal of the order in appeal or revision."

This explanation was struck down by the Supreme Court. It is clear from the above decision that it is not relevant for deciding this case since the Act does not provide for

an appeal or revision against the impugned order.

13. Another decision relied upon by the learned counsel for the applicants is the decision in Kusum Ingots & Alloys Ltd. v. Union of India [(2004) 6 S.C.C. 254], referred to earlier, in which the Supreme Court held that the words "wholly or in part" to the cause of action occurring in Article 226(2) of the Constitution are based on the doctrine of "Forum conveniens" enabling the petitioner to choose his forum when a part of the cause of action arises within one or the other High Court. This decision does not support the objection of the applicants.

14. I am of view that in the present case, the cause of action has almost wholly arisen within the jurisdiction of the Appellate Side of the Principal Seat of this Court at Bombay since the only action which is challenged is refusal of permission at Pune by the Joint Charity Commissioner under section 36 of the Act. I am of view that in a case such as this, wherever the property may be located, the parties would be entitled to approach the Principal Seat or the Bench of this Court within whose ordinary territorial limits the impugned order has been passed, since clearly the impugned order would be a material part of the cause of action. As observed

earlier, the locus of the properties would not, in such a case, determine the jurisdiction since the properties in respect of which the trust seeks permission to alienate may be located at several places within Maharashtra.

15. It must be made clear that as observed by the Division Bench in Nitin Industrial Associates (supra), the jurisdiction of the Court is co-terminus with the territory of the State. Therefore, as a matter of law, the litigants would be entitled to invoke the jurisdiction of the Principal Seat of any Bench in respect of any matter arising anywhere in the State of Maharashtra in view of the express language of clause (1) of Article 226. It makes no difference if the jurisdiction of the Court under Article 227 is invoked since clause (1) of Article 227 is couched in similar language. It reads as follows:-

> "Art. 227.(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction."
>
> (Emphasis supplied)

However, having regard to the High Court (Appellate Side)

Rules, the Benches of the Principal Seat would be extremely slow in entertaining matters which have arisen within the ordinary territorial jurisdiction of another Bench.

16. It must be made clear that where a part of the cause of action has arisen within the normal territorial jurisdiction of two Benches, a litigant would be entitled to approach either Bench. The Supreme Court observed in the case of Kusum Ingots & Alloys Ltd. (supra) as follows:-

> "Keeping in view the expressions used in Article 226(2) of the Constitution indisputably even if a small fraction of cause of action accrues within the jurisdiction of the High Court, the High Court will have jurisdiction in the matter. However, even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to

> exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens."

These observations are made by the Supreme Court in the context of jurisdiction of two High Courts, but can be applied reasonably in the context of normal territorial jurisdiction of Benches within a High Court. Clearly, the Principal Seat or the Bench, as the case may be, within whose territorial jurisdiction a part of the cause of action has arisen may decline to exercise its jurisdiction and return the petition for presentation to another Bench or the Principal Seat, as the case may be, if it is more convenient to do so, having regard to various factors such as where the record and proceedings of the case are located, the convenience of parties, et cetera. Clearly whether the cause of action has arisen within the normal territorial jurisdiction of the Principal Seat or the Bench is a matter which would be required to be decided on the facts of each case, as observed by the Supreme Court in Rajasthan High Court Advocates' Association's case (supra):-

> "It has to be left to be determined in each individual case as to where the cause of action arises."

17. As far as the present case is concerned, the objection has no merit whatsoever since the impugned order is passed at Pune which is within the ordinary territorial limits of the Appellate Side of the Principal Seat at Bombay.

18. In this view of the matter, I see no merit in this preliminary objection. Civil Application nos.2045 of 2005 and 2046 of 2005 are hereby dismissed.

19. Mr.Anturkar, the learned counsel for the applicants, submits that the petitions be deferred by a period of four weeks for admission. S.O. for four weeks.

Sd/-

S.A. BOBDE, J.